IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6050 OF 2005

M/s.Bingo & Associates & Ors. ..Petitioners.

Vs.

The Kalyan Dombivli Municipal

Corporation & Ors. ..Respondents.

....

Mr.Uday Warunjikar for the Petitioners.

Mr.A.S.Rao for Respondent Nos.1 to 3.

....

CORAM : F.I.REBELLO, J. AND

DR.D.Y.CHANDRACHUD, J.

2nd March, 2006.

P.C. :

The Petitioners had entered into an agreement with Respondent No.1 by which a part of land reserved for a garden was to be handed over to the Respondent Corporation. Pursuant to the agreement, the Respondent Corporation has given TDR for the plot to be surrendered in favour of the Petitioners to the extent of 50%. The Petitioners

availed of the TDR by construction on a part of the land which was to be excluded. The Planning Authority in so far as the excluded land is concerned had submitted a proposal for deleting that part from the proposed reservation for a garden and instead has planned it for the purposes of residence. By the present Petition what the Petitioners in fact seeks to do is rescind the agreement. If that be the case, it is not a fit case for this Court to exercise the extra-ordinary jurisdiction. It would be open to the Petitioners to pursue such alternative remedies as they are entitled to. The Petition is disposed of accordingly.

It is made clear that it will be open for the Respondent Corporation in respect of the building constructed by the Petitioners if they do not have occupation certificate to take such steps in law which they are entitled.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)